IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1494 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHADEVNAGAR INDUSTRIAL WORKERCO.OP HSG.SOCIETY LTD

Versus

BALUBHAI ANANT DANDEKAR SINCE DECEASED HIS HEIRS & L/RS.

Appearance:

1. First Appeal No. 1494 of 1979

Mr.Dhaval Barot for MR DF AMIN for appellant.

UNSERVED-EXPIRED (N) for Respondent No. 1,1/3-1/6

MR NILESH M SHAH for Respondent No. 1/1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 09/09/2002

ORAL JUDGEMENT

The present First Appeal is filed being aggrieved

of the judgement and decree dated 31.8.1979 passed in Special Civil Suit No.32 of 1972 by the learned Civil Judge (Senior Division), Navsari.

2. The suit was filed by the plaintiff to recover a sum of Rs.23,977.51 paise on the ground that the plaintiff had carried out the construction work of 50 bungalows of the defendant society and as details are given in para 18 of the plaint and as per the agreement dated 10.11.1971 the defendant society was to pay a sum of Rs.70,393.24 paise.

3. Mr.Dhaval Barot, the learned advocate appearing for the appellant strenuously submitted that the present suit is not maintainable in view of the fact that a notice as required under section 161 of the Gujarat Cooperative Societies Act, 1961 (hereinafter referred to as "the Act") was not given to the District Registrar. He submitted that in fact there were three notices given dated 16.9.1970, 7.12.1970 and 19.5.1971. There was a reply dated 30.5.1971 to the notice dated 19.5.1971 to which there was a rejoinder dated 15.6.1971. It is this rejoinder which is referred to in the plaint. But then there was no notice under section 161 of the Act after the agreement dated 10.11.1971.

4. The learned Judge has raised the issue at serial no.8, which reads as under:

> "Whether the defendant proves that this suit is not maintainable as no notice as required under section 167 of the Gujarat Cooperative Societies Act, is not given in writing to Registrar of Cooperative Societies and that this Court has no jurisdiction?"

5. The learned Judge in paras 12 & 13 analysed the aforesaid issue threadbare and this Court finds no reason to interfere with the conclusions reached by the learned Judge.

6. In the alternative, the learned advocate Mr.Barot submitted that the plaintiff had committed a mistake in alleging that a sum of Rs.7,000/-, had been left out in the agreement dated 10.11.1971 which he has added in the amount claimed in the plaint. Despite his best efforts, Mr.Barot could not successfully dismantle the conclusions/ findings reached by the learned judge. There is no substance in this Appeal. Mr.Barot submitted that the present Appeal may be entertained and allowed to a limited extent holding that a sum of Rs.7,000/-, was

wrongly included by the plaintiff in his claim. The amount of decree, i.e. Rs.23,977.51 which is deposited by the present appellant and is permitted to be withdrawn by the respondents herein, should be reduced by Rs.7000/-, and the respondents should be ordered to repay the same to the appellant.

7. In view of the fact that the learned advocate is not able to successfully dismantle the findings/ conclusions reached by the learned Judge, the present First Appeal fails in toto. The same is dismissed. No order as to costs.

(Ravi R. Tripathi, J.)

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